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**U.S. Citizenship  
and Immigration  
Services**

B-5

FILE:

Office: TEXAS SERVICE CENTER

Date: **AUG 02 2004**

IN RE:

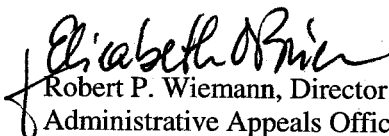
Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability and as a member of the professions holding an advanced degree. The petitioner seeks employment as a Feng Shui specialist in health care facilities. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree, and that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

To establish exceptional ability, the petitioner must meet at least three of six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii). The director, in denying the petition, listed most of the exceptional ability criteria and stated that the petitioner had not met those criteria, thus precluding a finding that the beneficiary has established eligibility as an alien of exceptional ability. The director also noted that the petitioner holds a bachelor’s degree, which is not an advanced degree, and the director found that “[the] petitioner is not eligible for classification as a member of the professions holding an advanced degree.” The director went on to discuss the petitioner’s claims regarding the national interest waiver, but only after stating that “the issue . . . is moot,” owing to the petitioner’s failure to establish eligibility for the underlying classification.

On the I-290B Notice of Appeal, counsel’s initial statement reads, in its entirety, “District Director erred in its [sic] decision that appellant did not demonstrate that he is a professional holding an advance degree and exceptional ability in the sciences, arts or business.” This assertion, by itself, is merely a claim rather than a coherent argument. Counsel indicated that a brief would follow within 30 days.

In her subsequent appellate brief, counsel addresses the director’s findings regarding the national interest waiver, but counsel does not address the director’s findings regarding the petitioner’s eligibility for the underlying immigrant visa classification except to state that the petitioner “falls into both categories of EB-2, professional and exceptional ability.” This claim does not rebut or overcome the director’s findings. Counsel does not explain why the director’s finding was in error, nor does counsel identify any evidence that would warrant the reversal of that finding.

Counsel’s appeal arguments focus entirely on an issue that the director deemed “moot,” with no articulated effort to overcome the finding that the petitioner has not established eligibility for the classification. Thus, a detailed discussion of counsel’s arguments on appeal would serve no useful purpose, because there would remain the director’s un rebutted finding that the petitioner has not shown that he qualifies for classification either as an alien of exceptional ability or as an advanced degree professional. Counsel has offered no substantive response to this pivotal basis for the denial of the petition.

**ORDER:** The appeal is dismissed.